



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7122759

Date: JAN. 29, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a pharmaceutical company, seeks to classify the Beneficiary as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition concluding that although the Beneficiary satisfied three of the ten initial evidentiary criteria, as required, the Petitioner did not establish her sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of the field of endeavor. The Director further found that the Petitioner did not establish that the Beneficiary would be continuing to work in her area of extraordinary ability in the United States.

On appeal, the Petitioner asserts that it established by a preponderance of the evidence that the Beneficiary qualifies as an individual of extraordinary ability and maintains that the Director failed to consider the totality of the evidence.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then it must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner, a publicly-traded pharmaceutical company with a portfolio of [REDACTED] drug candidates, employs the Beneficiary as its [REDACTED] [REDACTED] Chief of Staff to its CEO.¹

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must establish that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director found that the Petitioner met the following three criteria: judging the work of others in her field under 8 C.F.R. § 204.5(h)(3)(iv); authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi); and performing in a leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). The record reflects that the Beneficiary served as a peer reviewer for at least one manuscript submitted for publication to a professional journal and co-chaired a [REDACTED] Seminar in her area of

¹ The Beneficiary's job title at the time of filing was [REDACTED] and Chief of Staff to the CEO." The record reflects that she received a promotion to the "Associate Director" position in February 2019 shortly after the petition was filed.

expertise, and therefore satisfied the criterion related to judging. In addition, the Petitioner provided evidence that the Beneficiary has authored scholarly articles published in journals including *Cancer Research*, *Journal of Biological Chemistry*, and *Nature Medicine*.

Finally, we agree with the Director's determination that the Beneficiary satisfies the criterion related to leading or critical roles based on her employment with the Petitioner. The Petitioner has provided detailed information explaining the Beneficiary's role, its influence on management decision-making, and its resulting impact on the outcome of the organization's activities. Further, the Petitioner submitted sufficient evidence to establish that it enjoys a distinguished reputation in its industry.

Because the Petitioner has demonstrated that she satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, that the Beneficiary has achieved sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.²

The record reflects that the Beneficiary received her bachelor of technology in pharmaceutical chemistry and technology from the University of [REDACTED] in 2010. In 2015, she received her doctor of philosophy in [REDACTED] from the University of [REDACTED] at [REDACTED], where she was the recipient of several scholarships and fellowships for academic excellence and research progress. While engaged in her studies she held internships with [REDACTED] (2008) and [REDACTED] (2013). After completing her Ph.D., the Beneficiary worked as a postdoctoral research associate at [REDACTED] Medicine from 2015 to 2016. The Petitioner then hired the Beneficiary in 2016 and, as noted, employed her as its [REDACTED] [REDACTED] at the time it filed the petition.

As mentioned above, the Director found that the Beneficiary has judged the work of others within her field, authored scholarly articles, and holds a leading or critical role within the petitioning company. We have also considered other relevant evidence such as the Beneficiary's awards, her membership in a professional association, and the recognition she has received based on her original scientific contributions to her field. The record, however, does not demonstrate that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

² See also USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

Regarding the Beneficiary's service as a judge of the work of others in her field, an evaluation of the significance of her experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. The record reflects that the Beneficiary completed one manuscript review for the *Journal of Biological Chemistry* in 2017. The Petitioner also provided evidence that she was offered an honorary position on the editorial board of *International Physiology Journal*, although the record does not reflect whether she accepted this position. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of her field. Without evidence that sets her apart from others in his field, such as evidence that she has a consistent history of completing a substantial number of review requests relative to others, or served in editorial positions for distinguished journals or publications, the Petitioner has not established that the Beneficiary's peer review experience places her among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner emphasizes that the Beneficiary also judged the work of her peers based on her appointment as co-chair of the 2016 [redacted] Seminar ([redacted]) on [redacted], which required her to evaluate the posters and oral presentations of potential participants. The Petitioner maintains that the conferences and seminars organized by [redacted] are "some of the most prestigious in the scientific community" and that "only the top scientists from around the world are invited to [redacted] events." Several of the submitted expert opinion letters comment on the Beneficiary's [redacted] co-chairing experience. For example, [redacted] of the University of [redacted] states that "[b]eing elected to chair a [redacted] is an extremely prestigious feat for any scientist and is reflective of the high regard for [the Petitioner's] scientific accomplishments within her peer group and the scientific community." Further, [redacted] of [redacted] states that the Beneficiary's [redacted] co-chair role was "an extremely prestigious feat for a scientist at her level."

The Petitioner provided the itinerary from the [redacted] event that the Beneficiary co-chaired, which is described in the materials as "a unique forum for graduate students, post-docs, and other scientists with comparable levels of experience and education." The description indicates that the [redacted] was held in conjunction with the [redacted] and that the conference and seminar events have separate applications. This evidence, indicating that attendance at the seminar event is limited to students and less experienced scientists, does not support the Petitioner's claim that the [redacted] is an exclusive invitation-only event reserved for the top scientists in a specific field. The record does not, for example, include information from the [redacted] outlining their criteria for evaluating or selecting potential [redacted] chairs.³ We acknowledge that the Petitioner's selection as co-chair for a [redacted] event is a notable professional accomplishment and indicates that she has received recognition from the scientific community in her area of research. However, the evidence related to this role is insufficient to support a finding that her experience chairing one [redacted] session is indicative of her being in the

³ We note that the website of [redacted] indicates that its seminar programs are "organized by and for young investigators" and provide "a way to interact with leaders who may later serve as mentors." *See* [https://\[redacted\]](https://[redacted]) (last accessed on Jan. 27, 2020). This information suggests that the chairs selected to organize the seminar events are also young investigators, similar to the graduate students and postdoctoral associates who attend them. We also note that the main page of the [redacted] indicates that the organization has over 300 [redacted] events scheduled for 2020, suggesting that hundreds of scientists chair or co-chair these events annually.

small percentage at the very top of her field, nor does it not demonstrate she has enjoyed national or international acclaim based on her role in co-chairing this two-day event.

Likewise, the Beneficiary's publication of scientific research does not automatically place her at the top of the field. The Petitioner emphasized that the Beneficiary published six papers in leading peer-reviewed journals, authored two invited book chapters and a review article, and has been invited to deliver several oral presentations at conferences.⁴ The Petitioner, however, has not demonstrated that this publication record is consistent with having a "career of acclaimed work." H.R. Rep. No. at 59. As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of the Beneficiary's articles can be an indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that her work has been recognized and that other researchers have been influenced by it. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. At the time of filing, the Petitioner offered evidence that the Beneficiary's most-cited articles had been cited 46 and 41 times, respectively. While the citations, both individually and collectively, show that field has noticed her work, she did not establish that such rates of citation are sufficient to demonstrate a level of interest commensurate with sustained national or international acclaim in her field. See section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not show that the citations to her research represent attention at a level consistent with being among small percentage at the very top of her field. See 8 C.F.R. § 204.5(h)(2).

On appeal, the Petitioner argues that, particularly for a relatively young scientist, "it is not helpful to compare various scientists' total citations, because this type of analysis does not take into account the scientists' differing sub-areas of specialty or their career paths." Further, the Petitioner claims that "there is no true comparison to another one of [the Beneficiary's] peers because her work launched a new, unique area of researching concerning the role of [redacted] in cancer." The Petitioner emphasizes that the quality of the citations to her work demonstrates the impact of her research and establishes that she is at the very top of the field.

The Petitioner places particular emphasis on the publication of the Beneficiary's [redacted]-related research in *Cancer Research* and *Journal of Biological Chemistry*, and the fact that she was invited to contribute a co-authored book chapter to [redacted] *Biology and Pathobiology (3rd Edition)*, which was edited by a Nobel Prize laureate in this field. The Petitioner provides evidence that *Cancer Research* is ranked in the top 8% of all oncology journals in impact factor and emphasizes that [redacted] confirmed that the Beneficiary was the first [redacted] graduate student to publish a first-authored paper in that journal in 16 years. [redacted]'s letter also notes that *Journal of Biological Chemistry* is "a prestigious highly cited journal" that is "known to have published one of the most highly cited articles of all time."

The record reflects that the Beneficiary's co-authored article "[redacted]" was highlighted by *Journal of*

⁴ The Beneficiary's submitted Google Scholar citation history included 17 publications authored by her between 2011 and 2017. The six peer-reviewed research articles referenced in the Petitioner's letter, along with the Beneficiary's co-authored review article and one of her book chapters, are the publications that have received multiple citations from others. Of the remaining nine publications listed, one article had one citation, and the rest had no citations.

Biological Chemistry as a “Paper of the Week” which according to the publication’s website means that it was selected by the editors “as representing the top 2% of JBC papers in overall importance.” While this is a notable distinction for the paper, it does not lead to a conclusion that all of the papers’ authors were similarly recognized as being at the top of the field. Notably, the record contains evidence that []’s website published an article titled [] which focuses on the research published in the Petitioner’s 2013 *Journal of Biological Chemistry* article. This same article was published on the websites *News Medica* (news-medica.net) and *Science Daily* (sciencedaily.com), but the evidence does not demonstrate that the Beneficiary herself has garnered substantial acclaim from this research. The article attributes the discovery of “a new role for [] [] to []. . . and co-workers” and contains multiple quotes from [] regarding the study’s findings. Although the Beneficiary contributed to the research and is acknowledged as a co-author, the media reports do not single her out or specifically acknowledge her for her findings. Here, the Petitioner did not establish that the “Paper of the Week” distinction or media coverage reflects that her original scientific contribution garnered her significant attention or indicates her status as an individual who has received “sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.” See section 203(b)(1)(A) of the Act.

Further, publication in a highly ranked journal in-and-of-itself, however, does not indicate a petitioner’s sustained national or international acclaim; rather, the high ranking or impact factor is reflective of the publication’s overall citation rate. It does not, however, show the influence of any particular author or demonstrate how an individual’s research has had an impact within the field. Here, while publishing articles in highly ranked journals is noteworthy, the Petitioner did not demonstrate that the Beneficiary’s overall publication record, including these articles, demonstrates the required sustained national or international acclaim for this highly restrictive classification. See H.R. Rep. No. at 59; section 203(b)(1)(A) of the Act.

Similarly, with respect to the Beneficiary’s contribution to a book edited by a Nobel Prize laureate, we agree with one expert’s opinion that her invitation to co-author the chapter “speaks to her high scientific caliber.” The Petitioner notes that “only 100” scientists in a sub-field with over 1,000 researchers who study [] biology were asked to make co-author chapters. However, the record does not show that the contribution of this book chapter, which, as of the date of filing had not been cited by other researchers, is indicative of her place among the small percentage at the very top of the field.

In addition to submitting evidence related to her publications, the Petitioner provided letters from experts who have weighed in on the importance of the Beneficiary’s research regarding the role of [] in cancer. [] a professor at [] states that the Beneficiary’s contributions “have enabled development of a new and significant field of [] research.” [] a professor of medicinal chemistry at [], states that although the role of [] in cancer progression is an active topic of interest in the field, “[the Beneficiary’s] work was the first to establish that [] and [].” He states that she made “a milestone discovery as it brings to prominence a field of research that was previously not well-established” and notes that the data she provided “can help guide and optimize drug development decisions.” [] at the National Cancer Institute, states that

he “can confidently place [the Beneficiary’s] discoveries among some of the most critical novel findings in the [redacted]/cancer space” and indicates that he has cited the Beneficiary’s work in his own co-authored articles. [redacted] who mentored the Beneficiary during her doctoral studies at [redacted] and was one of her co-authors in this research area, stated that her discovery of previously unknown signaling mechanisms of [redacted] are “remarkable” and “have changed our classical views of [redacted] biology.” He further states that he, as the laboratory head, has been invited to present data from their research at over 25 oral presentations worldwide” thus showing the “far-reaching impact” of the study. [redacted] of the [redacted] University of Ireland [redacted] states that the Beneficiary’s findings in this are “can offer development of additional, therapeutic solutions” and produced data sets that “will be invaluable resources to the entire scientific community in the area of [redacted] and cancer.”

These statements provide support for a finding that the Beneficiary made a significant and original scientific contribution but do not necessarily support a finding that she achieved sustained national or international acclaim as a result of such contribution. For example, while [redacted] indicates that he has been invited to present their joint research at over 25 conferences throughout the United States and worldwide and continues to receive invitations to do so, the Petitioner indicates that the Beneficiary herself was invited to give oral presentations related to this research at four U.S. conferences between 2012 and 2014 and has not received the same level of recognition for the work.

The Petitioner claims that the Beneficiary also made an original contribution in the field of [redacted] cancer research during her time at [redacted] Medicine which has resulted in additional acclaim and recognition in the field of oncology. The record reflects that she co-authored a “collaborative paper” titled ‘[redacted]’ published in *Nature Medicine* in 2017 that had been cited 41 times as of the date of filing in January 2019.⁵ [redacted] assistant professor of [redacted] Medicine, who mentored the Beneficiary when she was a postdoctoral associate, notes that *Nature Medicine* is “one of the top 5 journals in the field of medicine” and notes that “contributing authors in this publication” included several “world-renowned [redacted] cancer researchers.” [redacted], [redacted], and [redacted]. However, the record does not reflect how being one of 32 co-authors of this *Nature Medicine* article resulted in or contributed to the Beneficiary’s sustained national or international acclaim in the field.

A letter from [redacted] professor of biomedical research at University of [redacted] who worked with the Beneficiary during his previous tenure at [redacted] College, explains her findings in this field of research and asserts that “[the Petitioner’s] project during her postdoctoral work is highly meaningful to the advancement of precision medicine in [redacted] cancer.” He emphasizes that *Nature Medicine* is widely revered and has “a very low acceptance rate, typically less than 10%.” [redacted] further explains that she received additional recognition for this research by having her poster accepted for presentation at the 2016 [redacted] Cancer Research annual meeting, and by having her grant proposal outlining the research recommended for funding by the U.S. Department of Defense. He opines that “few scientists in the field achieve a similar milestone at this stage of their

⁵ The Petitioner also co-authored an article in this field of research titled ‘[redacted]’ which was published in *Cancer Research* in 2016. The record reflects that this article had not been cited by other researchers as of the date of filing.

careers.” [redacted] also states that the Beneficiary has achieved “milestones that are aspirational to cancer researchers at her career stage.” However, neither [redacted] nor [redacted] explains how the Petitioner’s receipt of postdoctoral grant funding or presentation of a poster at the [redacted] meeting demonstrates that her research in this area has resulted in her being among the small percentage of scientists at the very top of the field as a whole. Overall, the evidence related to the Beneficiary’s publications and scholarly contributions to her field demonstrates that she is an accomplished scientist who garnered a level of recognition for her [redacted] cancer and [redacted] related research that is notable for a researcher at the early stages of her career. However, the evidence does not show that she is recognized as being among the small percentage of scientists in her field who have achieved sustained national or international acclaim as evidenced through extensive documentation.

The Petitioner has also not demonstrated how the Beneficiary’s leading or critical role in its organization has resulted in her sustained national or international acclaim.⁶ The Petitioner provides letters from several of the Beneficiary’s current and former work colleagues who provide details of her role in helping to secure critical partnership and collaboration projects with other pharmaceutical companies.⁷ Further, it asserts that “[e]xecuting four (4) business deals in one year is no easy feat and itself underscores [the Beneficiary’s] extraordinary abilities.”

The record reflects that the referenced collaboration and partnership deals are both highly valuable to the Petitioner from a financial standpoint and beneficial to ongoing research into [redacted] treatments based on the company’s [redacted] assets. The Beneficiary’s colleagues provide sufficient detail to establish her critical role with the company, and offer high praise for her talents. For example, [redacted] the Petitioner’s former Chief Legal Officer and General Counsel, asserts that she considers the Beneficiary to be “among a small, top percentile of individuals with the technical background and analytical skills required to drive such a function within a biotechnology company.” Likewise, [redacted] the Petitioner’s Vice President of Business Development and Alliance Management, states that the Beneficiary is “an extraordinary individual in the field of [redacted]” and “in the top 1% of individuals that I have worked with in a similar capacity across my career and the top 1% of performers at [the Petitioner]. [redacted] the City of Hope Medical Center, indicates that he worked with the Beneficiary to write a three-party research collaboration for the purpose of advancing a vaccine candidate for a type of [redacted]. He states that the Beneficiary’s “unique skill set rises to a much greater level than peers at her same level” and “is far beyond the reach of most professionals at her stage of their professional careers.”

While the testimonial evidence demonstrates the nature of the Beneficiary’s critical role within the company, indicates her involvement with some high-profile deals and collaboration projects, and offers strong praise for her talents from both colleagues and partners, the record does not show how her role with the petitioning company or her achievements in that role have resulted in national or

⁶ The Director determined that the Beneficiary met the criterion at 8 C.F.R. § 204.5(h)(3)(viii) based only on her leading or critical role with the Petitioner, and the record reflects that the Petitioner initially claimed eligibility based solely on that role. The Petitioner later claimed that the Beneficiary also held a critical role as a postdoctoral associate for [redacted] Medicine. We note that the Beneficiary’s achievements and recognitions received during her tenure there, including her *Nature Medicine* publication, her U.S. Department of Defense grant, and her invitation to present a poster at the 2016 [redacted] meeting, are all addressed elsewhere in this decision and will not be repeated in our analysis related to this criterion.

⁷ While we discuss a representative sample here, we have reviewed and considered all of the letters that relate to the Beneficiary’s role with the petitioning company.

international acclaim or her recognition as being one of the small percentage at the top of her field by persons other than co-workers and partners with whom she has worked. The Petitioner provided copies of e-mails that the Beneficiary has received which demonstrate that recruiters working for other companies have tried to recruit her based on the information she provided on her LinkedIn profile; however, this evidence was submitted to establish that there is a high demand for professionals with her skillset, not to establish that she is being recruited based on her recognition as one of the scientists or industry professionals at the very top of the oncology field.

The Petitioner further argues on appeal that the Director overlooked evidence related to the Beneficiary's awards and memberships in his final merits determination, and that such evidence further supports a finding that the Beneficiary meets the requirements for this classification.

The Director acknowledged that the Beneficiary was awarded a Department of Defense research grant providing over \$211,000 in funding for a [] cancer research project, but determined that "research grants are not awards for excellence; rather they simply fund research or work" and are "not intended to honor or recognize past excellence." On appeal, the Petitioner maintains that the Beneficiary's research grant "shows sustained and recognition in the scientific community placing her among the top percentage of individuals in her field." The record reflects that, during her tenure as a postdoctoral associate at [] Medicine, the Petitioner applied for and was awarded a Department of Defense [] Cancer Research Program [] "Early Investigator Research Award – Postdoctoral." She was one of 16 recipients of this grant in 2016 out of 77 applicants whose applications met the program requirements, all of whom were required to be actively involved in postdoctoral training for a period of less than three years.

The evidence indicates that factors considered in awarding the grant included the Beneficiary's academic record, research and publication history, and career goals, as well as factors unrelated to her individual achievements, such as her mentor's qualifications as a researcher and his past record of training young scientists, whether the application presented a training and development plan for the Beneficiary, whether she would have the facilities and equipment necessary to carry out the research, and whether the research program had the potential to address an unmet need in prostate cancer research. Therefore, while the grant reviewers took into account the Beneficiary's past achievements as a student and young investigator, and the grant was received through a competitive process, the evidence does not support the Petitioner's claim that the Beneficiary's receipt of this postdoctoral funding, even from a national organization such as the U.S. Department of Defense, establishes or is reflective of her national or international acclaim or her placement among scientists at the very top of the field. The Petitioner has not submitted sufficient evidence of the acclaim connected to this award, such as press coverage beyond documenting that a list of award winners was published on the granting organization's own website. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

On appeal, the Petitioner also highlights the Beneficiary's associate membership in the American Association of Cancer Researchers (AACR), as a factor that should contribute to a finding that she meets the high standard for this classification. A letter from the AACR indicates that it is a

professional association with 40,000 member scientists worldwide and six membership levels. Associate membership is available to graduate students, medical students and residents, and postdoctoral fellows, who must be nominated by a current active, emeritus or honorary member in good standing. The Petitioner emphasizes that “membership is only granted if the candidate has or will make long-term contributions to cancer research and adheres to accepted ethical scientific methods,” and asserts that the Beneficiary’s “membership highlights her extraordinary ability in the field of oncology, further qualifying her for this criterion as an extraordinary ability individual in the sciences.” The Petitioner provided a letter from [REDACTED] the AACR member who nominated her, and while he clearly holds her scientific work in high regard, the record does not support a finding that being accepted as associate member in the AACR points to a scientist’s national or international acclaim, nor does it demonstrate how it is indicative of one of the small percentage who has risen to the top of the field.

In addition, on appeal, counsel points to the Beneficiary’s “extraordinarily high remuneration” as supportive of “a showing of sustained acclaim and recognition in her scientific community placing her among the top percentage of individuals in her field.” Counsel acknowledges, however, that the Petitioner did not previously claim eligibility based on the Beneficiary’s salary under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), and the appeal does not include independent, objective evidence establishing that the Beneficiary’s salary or remuneration package is high in comparison with others employed in similar positions in her geographic area. Further, while a high salary may demonstrate some degree of recognition of her achievements in the field, the Petitioner has not submitted evidence showing the Beneficiary’s earnings are at a level reflecting that she is one of the small percentage who has risen to the top of the field.

Finally, as noted, the Petitioner has submitted a number of recommendation letters that summarize the Beneficiary’s professional accomplishments as both a researcher and professional in the biotechnology researcher. Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). In fact, as noted, many of the highly accomplished experts who provided their support of the Beneficiary’s petition indicate that they consider her to be among the top when compared to scientists with a similar amount of research or industry experience, rather than comparing her to those who enjoy sustained national or international acclaim and recognition for being at the top of the field. For example, [REDACTED] stated that he has been “impressed with [the Beneficiary’s scientific knowledge in oncology and analytical skills, and can place her productivity and career progress as highly exceptional beyond what I have seen in her peer group.”

The record as a whole, including the evidence discussed above, does not establish the Beneficiary’s eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is

among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

C. Continued Work in the Area of Extraordinary Ability

The Director also denied the petition based on a finding that the Petitioner did not establish that the Beneficiary would be working in the United States in her area of claimed extraordinary ability, as required by section 203(b)(1)(A)(ii) of the Act. The Director's determination was based on a conclusion that the Petitioner has offered the Beneficiary a managerial role "that is not in the beneficiary's field of medical research" and because the Beneficiary would not be working "as a researcher."

We agree with the Petitioner's assertion that the Beneficiary's field and area of expertise is oncology and that both her prior work as a researcher and her role with the Petitioner rely on her expertise in this field. The Petitioner has submitted several detailed letters from its own senior staff explaining how the Beneficiary's current role relies on her scientific knowledge in the field of oncology research, as well as letters from independent recruiters in the biotechnology field who explain that persons in pharmaceutical industry roles comparable to the Beneficiary's typically possess a background similar to her own. Accordingly, we will withdraw the Director's adverse finding with respect to this issue.

D. O-1 Nonimmigrant Status

The record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.